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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

JOHN DOE, Plaintiff and Respondent, v. POMONA COLLEGE, Defendant and Appellant.	B291073 (Los Angeles County Super. Ct. No. BS163739)

APPEAL from a judgment of the Los Angeles Superior Court, Mary H. Strobel, Judge. Affirmed.

Hathaway Parker, Mark M. Hathaway and Jenna E. Parker, for Plaintiff and Respondent.

Hirschfeld Kraemer, Reed E. Schaper and Derek K. Ishikawa, for Defendant and Appellant.

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A college student was successful in obtaining a writ overturning his college's finding that he had engaged in sexual misconduct against another student. Pursuant to Code of Civil Procedure section 1021.5,[1] the court issuing the writ also awarded the student $130,000 in attorney fees. The college challenges the fee award. Concluding there was no abuse of discretion, we affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

A. *The incident*

In March 2015, John Doe (Doe) was a student at Pomona College (College) and Jane Roe (Roe) was a student at Pitzer College. These two colleges are part of a consortium known collectively as "The Claremont Colleges." On March 6, 2015, the two met up at a party and went back to Doe's dorm room. This was not their first date; the night before, they had kissed and groped one another. This time, however, Doe "'fingered'" Roe's vagina.

The parties disputed whether Roe consented to this act: Doe maintained the act was consensual; Roe said it was not, and that she had submitted to Doe's advances because of post-traumatic stress disorder caused by a prior incident, which caused her to freeze up and remain silent throughout the incident.

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1 All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

B. *Administrative proceedings*

1. *Complaint*

Eight months later, on November 10, 2015, Roe filed a Title IX complaint with the College alleging that Doe committed sexual misconduct.[2]

2. *Investigation*

The College appointed investigators to assess the merit of Roe's complaint. In doing so, the investigators applied the definitions of sexual misconduct from the College's 2015 Sexual Misconduct Policy (2015 Policy).[3] After interviewing 20 witnesses, the investigators issued a 54-page report finding "enough evidence to move this allegation forward . . . before an External [Investigator]."

3. *Title IX Coordinator's finding*

Based on the investigator's report, the College's Title IX Coordinator issued Doe a Statement of Alleged Policy Violation finding him guilty of violating the College's policy against non-consensual sexual intercourse.

4. *Request to overturn Title IX Coordinator's finding*

On April 22, 2016, Doe filed a request for review with the External Adjudicator appointed by the College to evaluate any

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2 Roe subsequently filed another complaint alleging that Doe harassed her and violated a no-contact order by bumping into her on campus, and Doe filed a complaint against Roe alleging that she had committed sexual misconduct by placing his hand on her vagina. Neither of these additional complaints is relevant to this appeal.

3 Although the trial court subsequently referred to this policy as the "2013 Policy," the Policy is dated 2015.

challenge to the Title IX Coordinator's findings. Doe asked the External Adjudicator (1) to overturn the Title IX Coordinator's finding and (2) to direct the investigators to conduct additional investigation, including asking Roe several follow-up questions regarding her prior statements that were inconsistent regarding whether she had consented to Doe's sexual act on March 6, 2015. On April 29, 2016, the External Adjudicator declined to overturn the Title IX Coordinator's findings and rejected Doe's requests to pose more questions to Roe, finding that "the Procedures more appropriately provide how questions can be asked at [the] hearing."

5. *External Adjudicator's finding*

On May 18, 2016, the External Adjudicator conducted an evidentiary hearing. At the outset of the hearing, the External Adjudicator noted that Doe had a "right to pose questions to any of the witnesses . . . presented" and that he had "a right to submit questions for the complain[ant] [Roe], but . . . that would have had to have been done in advance." Because (1) Roe elected not to attend the hearing, either in person or remotely, (2) Doe had not submitted in advance any questions to be posed to Roe at the hearing, [4] and (3) the External Adjudicator had refused Doe's earlier request to pose questions to Roe as part of a continued investigation, Doe had no opportunity whatsoever to question Roe.

On May 27, 2016, the External Adjudicator issued a 24-page document entitled Factual Findings and Decision. Although

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4 Such questions were due five days before the hearing, but Roe did not announce her non-attendance until two days before the hearing.

the External Adjudicator found that Doe genuinely believed that Roe had consented to the sexual act, the External Adjudicator nevertheless ruled that the act was non-consensual because, under the 2015 Policy, "there has to be a *clear* showing of consent to engage in each of the physical acts that occurred." The External Adjudicator accordingly concluded that Doe had violated the College's policy against non-consensual sexual intercourse and imposed a penalty of a two-semester suspension.

6. *Appeal to the Dean of Students*

On June 6, 2016, Doe appealed the External Adjudicator's ruling on several grounds, including that he was denied any opportunity to examine Roe (either directly or indirectly).

On July 25, 2016, the Dean of Students rejected Doe's appeal and affirmed the External Adjudicator's ruling. With regard to Doe's claim that he was denied the right to question Roe, the Dean of Students ruled that (1) the College's 2016 Sexual Misconduct Policy (2016 Policy), which supplied the procedural framework for the adjudication of Roe's complaint, "does not require the complainant . . . to participate in the hearing," and (2) the External Adjudicator "allowed . . . Doe to question the witnesses who *were* at the hearing." (Italics added.) Because the External Adjudicator "followed the appropriate hearing procedures outlined in the [2016] Policy," the Dean of Students reasoned, Doe was not denied a fair hearing.

II. Procedural Background

A. *Underlying writ litigation*

On July 26, 2016, Doe filed a petition for a writ of administrative mandamus against the College and filed an

amended petition on July 28, 2016.[5] In the operative amended petition, Doe alleged that he was denied a fair hearing and that the College's finding of sexual misconduct was not supported by substantial evidence. He sought a writ to "set aside the findings and sanctions." He did not seek monetary damages.

Following two rounds of briefing, the trial court issued a 22-page order granting Doe's writ petition on the ground that Doe had been denied a fair hearing.[6]

The 2016 Policy, which supplied the procedural framework for the investigation and prosecution of Roe's complaint, purported to provide the accused with two opportunities to indirectly pose questions to the complainant—namely, (1) the accused could ask the External Adjudicator to overturn the Title IX Coordinator's finding and to outline further investigatory steps to be taken, including having the investigators pose further questions to the complainant, and (2) the accused could submit questions for the External Adjudicator to ask the complainant at the hearing. Rather than allow Doe either opportunity, the External Adjudicator rejected Doe's request to have the investigators pose additional questions to Roe as part of a continued investigation because it was "more appropriate[]" to question her "at [the] hearing," but when Roe elected not to attend the hearing, faulted Doe for not submitting "questions in advance." The net result of the External Adjudicator's rulings,

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5 Doe originally sued the Title IX Coordinator, the Dean of Students and the Chair of the Board of Trustees of the College, but subsequently swapped them out for the College itself.

6 The court rejected Doe's argument that the College's finding was not supported by substantial evidence.

the court found, was to deny Doe any opportunity to question Roe "directly or indirectly" and thus to deny Doe a fair hearing.

The court went on to find that this denial was prejudicial. Noting that the question of Roe's consent turned chiefly on the credibility of the only two percipient witnesses to the incident, the court found it "entirely unclear whether the [External Adjudicator] would have made the same credibility determination had Roe been questioned," especially in light of Roe's inconsistent accounts of the parties' sexual contact.

B. *Attorney fees litigation*

Following the entry of judgment, Doe filed a motion seeking attorney fees of $255,672.50 (that is, fees of $127,836.25 with a multiplier of 2.0) pursuant to section 1021.5.

Following two rounds of briefing,[7] the court issued a 22-page order and a subsequent eight-page order awarding Doe $130,000 in attorney fees.

The court noted that under section 1021.5, a "successful party" is entitled to attorney fees if he shows that (1) "[t]he action has resulted in the enforcement of an important right affecting the public interest," (2) "a significant benefit . . . has been conferred on the general public or a large class of persons," and (3) "the necessity and financial burden of private enforcement are such as to make the award appropriate." Because the College did not dispute that Doe was "successful" or that he satisfied the "necessity and financial burden" element, the court's analysis

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7 The College also filed an unauthorized sur-reply after the first round of briefing. Doe filed a further response and motion to strike. The court ignored these further filings.

focused on the "important right" and "significant benefit" elements.

The court found that Doe's action enforced an "important right affecting the public interest"—namely, "that college students accused of sexual misconduct in Title IX proceedings [must] receive a fair hearing."

The court also found that Doe's action had conferred a significant benefit upon a large class of persons. Although "[a] primary effect of [Doe's] lawsuit was [a] personal" benefit to Doe (insofar as it removed the finding of sexual misconduct), the court acknowledged that it must still "assess" (1) the significance of any other benefit flowing from Doe's lawsuit, and (2) the size of the class who received any such benefit. Here, the court found that the College had "implemented its [2016] policy . . . in a manner that deprived [Doe] of a fair hearing" by virtue of (1) the External Adjudicator's categorical refusal to have the investigators ask Roe follow-up questions, (2) Roe's absence from the hearing, thereby denying Doe any opportunity to question her, and (3) the Dean of Students' refusal, during the administrative appeals process, to "rectify" this denial of any opportunity to question Roe. In light of the Dean of Students' unwillingness to intervene to correct the External Adjudicator's clear denial of a fair hearing, the court found that the denial in Doe's case was neither "unique" nor "unlikely to recur." What is more, the court found that "it seems clear that a large class of persons—at the least, all students at the College—are affected by th[e 2016] Policy" and endangered by the College's defective implementation of it. Because Doe's action helped to assure a fair hearing to any of the College's present and future students who might become involved

in Title IX proceedings, the court concluded that the action had conferred a significant benefit on a large class of persons.

C. *Appeal*

The College filed this timely appeal.

DISCUSSION

The College argues that the trial court erred in awarding Doe attorney fees under section 1021.5 because, in its view, Doe did not establish his eligibility for such an award. Where, as here, the issue before us is the *application* of section 1021.5's eligibility requirements rather than their *definition*, we review solely for an abuse of discretion. (*La Mirada Avenue Neighborhood Assn. of Hollywood v. City of Los Angeles* (2018) 22 Cal.App.5th 1149, 1155-1156 (*La Mirada*); *Baggett v. Gates* (1982) 32 Cal.3d 128, 142-143 (*Baggett*).) Under this standard of review, "reversal is appropriate" if (1) the trial court's ruling had "no reasonable basis" (*Baggett*, at p. 143), or (2) the trial court's factual findings were not supported by substantial evidence (*Indio Police Command Unit Assn. v. City of Indio* (2014) 230 Cal.App.4th 521, 541 (*Indio Police*)).

I. Analysis

As a general rule, parties in litigation pay their own attorney fees. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 488.) Section 1021.5 is an exception to that rule. (*Ebbetts Pass Forest Watch v. Department of Forestry & Fire Protection* (2010) 187 Cal.App.4th 376, 381 (*Ebbetts Pass*).) Derived from the judicially crafted "private attorney general doctrine," section 1021.5 is aimed at encouraging litigants to pursue meritorious litigation vindicating important rights and benefitting a broad swath of citizens, and it achieves this aim by compensating successful litigants with an award of attorney fees.

(*Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 924-925 (*Woodland Hills*); *Serrano v. Priest* (1977) 20 Cal.3d 25, 43, 47.) To obtain attorney fees under section 1021.5, the moving party must establish that (1) it is "a successful party" in an "action," (2) the action "has resulted in the enforcement of an important right affecting the public interest," (3) the action has "conferred" "a significant benefit" "on the general public or a large class of persons," and (4) an award of attorney fees is "appropriate" in light of "the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity."[8] (§ 1021.5; see *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 317-318 (*Press*); *Ebbetts Pass*, *supra*, 187 Cal.App.4th at p. 381.)

Because the College does not dispute that Doe is a "successful party" or that an award of fees is "appropriate" in light of the "necessity and financial burden of private enforcement," our analysis is confined to asking whether the trial court abused its discretion in concluding that Doe met the remaining two eligibility requirements.

A. *Enforcement of an important right affecting the public interest*

The trial court did not abuse its discretion in ruling that Doe's action enforced an important right affecting the public interest. Courts have "broadly interpreted the important right concept" to encompass constitutional rights as well as statutory

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8 If the successful party obtains damages, the party must also establish that the attorney fees "should not in the interest of justice be paid out of the recovery." (§ 1021.5) That requirement is not at issue here because Doe did not seek or obtain any damages.

rights that further "important" rather than "trivial or peripheral public policies." (*Woodland Hills*, *supra*, 23 Cal.3d at p. 935; *Bell v. Vista Unified School Dist.* (2000) 82 Cal.App.4th 672, 690-691 (*Bell*); *Sweetwater Union High School Dist. v. Julian Union Elementary School Dist.* (2019) 36 Cal.App.5th 970, 988 (*Sweetwater*).) Doe's action enforced two important rights. First, it enforced the right to a fair hearing. "[D]ue process undoubtedly is an important right affecting the public interest" (*Hall v. Dept. of Motor Vehicles* (2018) 26 Cal.App.5th 182, 191), and is so critical that our Legislature and courts have required the administrative decisions of even private institutions to afford some modicum of due process. (§ 1094.5, subds. (a) & (b) [courts may grant writ of administrative mandamus where a "final administrative . . . decision" was not the product of "a fair trial"]; *Doe v. University of Southern California* (2016) 246 Cal.App.4th 221, 247-248; *Doe v. Allee* (2019) 30 Cal.App.5th 1036, 1061, fn. 30.) Second, Doe's action enforced the right to have "'universit[ies] . . . comply with [their] own policies and procedures'" "'[w]here student discipline is at issue.'" (*Doe v. University of Southern California* (2018) 29 Cal.App.5th 1212, 1238; see generally *Press*, *supra*, 34 Cal.3d at p. 318 ["Attorney fees have consistently been awarded for the enforcement of well-defined, existing obligations."].)

B. *Conferring significant benefit on a large class of persons*

Whether an action meets this element is a function of (1) "the significance of the benefit" conferred, and (2) "the size of the class receiving [the] benefit." (*Woodland Hills*, *supra*, 23 Cal.3d at pp. 939-940.) In evaluating these factors, courts are to "realistic[ally] assess[]" the action's "gains" "in light of all the pertinent circumstances." (*Id.* at p. 940.) For a benefit to be

"significant" (the first sub-element), the "extent of the public benefit" from the lawsuit must be "substantial," but "need not be great." (§ 1021.5; *RiverWatch v. County of San Diego Dept. of Environmental Health* (2009) 175 Cal.App.4th 768, 781.) The benefit need not be monetary, and "need not represent a 'tangible' asset or a 'concrete gain.'" (§ 1021.5 [defining "a significant benefit" as either "pecuniary or nonpecuniary"]; *Woodland Hills*, *supra*, 23 Cal.3d at p. 939.) As our Supreme Court has noted, "the effectuation of a fundamental constitutional or statutory policy" can itself constitute a significant benefit. (*Ibid.*)

Given these definitions, the trial court did not abuse its discretion in concluding that Doe's action conferred a significant benefit on a large class of persons. The court had a reasonable basis for concluding that the action conferred a significant benefit because, as noted above, the action effectuated the constitutionally grounded and statutorily enforced right to a fair hearing in administrative proceedings. (See also *Beach Colony II v. California Coastal Com.* (1985) 166 Cal.App.3d 106, 112 (*Beach Colony II*) [action that "improve[d] the [administrative agency's] sensitivity to [the] due process rights of [its constituents]" conferred significant benefit]; accord, *La Mirada*, *supra*, 22 Cal.App.5th at p. 1158 [noting how the "important right" and "significant benefit" analyses "to some extent dovetail"].) The court also had a reasonable basis for concluding that Doe's action conferred this benefit upon a large class of persons—namely, the universe of the College's students subject to the College's misapplication of the 2016 Policy due to the College's refusal to rectify such misapplication.

The College proffers two reasons why the trial court nevertheless abused its discretion in concluding that Doe's action conferred a significant benefit upon a large class of persons.

First, the College asserts that Doe's lawsuit did not allege any intrinsic defects in the 2016 Policy and that the misapplication of that policy in Doe's case arose from a "unique set of circumstances" unlikely to arise again (that is, the External Adjudicator's misunderstanding of Doe's right to ask the investigators to ask follow-up questions of Roe prior to the hearing combined with Roe's last-minute failure to attend the hearing). We reject this assertion. Doe's decision not to challenge the 2016 Policy itself is irrelevant because what deprived Doe of a fair hearing was not the policy but *its implementation*. As noted above, a lawsuit that forces an entity to follow its own rules can confer a substantial benefit. (E.g., *Indio Police*, *supra*, 230 Cal.App.4th at p. 542 [""""litigation [that] enforces existing rights""""" can confer a "substantial benefit"].) The trial court also had a reasonable basis for concluding that the denial of a fair hearing that happened to Doe would recur: Although the particular circumstances leading to the denial in Doe's case might not recur in exactly the same way, the College's refusal to rectify that denial through its internal appeals process, even when the denial was specifically called to its attention, demonstrated an insensitivity to due process concerns that *was* likely to recur. The College's further assertion that the External Adjudicator and the Dean of Students will not make the same mistakes twice ignores that the reason they will not is *because of Doe's action*.

Second, the College contends that Doe did not proffer any *evidence* to support his position that his action conferred a

significant benefit upon a large group of people—no evidence that there had been any other sexual misconduct hearings where the complainant failed to show, no evidence that the External Adjudicator in this case had presided over other sexual misconduct hearings, no evidence that College students other than Doe had ever been charged with sexual misconduct, and no evidence that Doe's case got any press coverage that might affect students at other college campuses. All Doe proffered, in the College's view, was "pure speculation."

We reject these contentions. Not only do they rest on the premise (which the trial court had a reasonable basis to reject) that Doe's case was wholly unique and unlikely to recur, but they also misapprehend the moving party's burden under section 1021.5. Although the moving party *may* supply evidence to substantiate the significance of the benefit his lawsuit confers (e.g., *Boatworks, LLC v. City of Alameda* (2019) 35 Cal.App.5th 290, 308 (*Boatworks*)), the moving party is not obligated to do so. It is enough if the trial court "could reasonably conclude" that the significant benefit conferred by the action would reach a large group of people. (*Indio Police*, *supra*, 230 Cal.App.4th at p. 544 [so holding]; *Sweetwater*, *supra*, 36 Cal.App.5th at p. 991 [same]; *Boatworks*, at p. 308 [looking to what "the [trial] court could conclude"]; see also *Christensen v. Superior Court* (1987) 193 Cal.App.3d 139, 145 [finding benefit to "all Orange County minors" without evidence of such]; *Mounger v. Gates* (1987) 193 Cal.App.3d 1248, 1259 [finding benefit to "all public safety officers in the state" without evidence of such]; accord, *Indio Police*, *supra*, 230 Cal.App.4th at p. 543 [class of persons who receive the significant benefit conferred by the lawsuit need not be ""readily ascertainable"" [citation]"]; see generally, *People v.*

Annin (2004) 117 Cal.App.4th 591, 601 ["substantial evidence includes all reasonable inferences that may be drawn from the evidence"].) We reject the College's further argument that Doe's action conferred no significant benefit upon a large group of people because it did not result in a published decision addressing the due process rights of students. This argument overlooks that the reason why there was no published decision on the merits of Doe's due process claim was because Doe won and the College elected not to appeal its loss; we decline to give the College "extra credit" for its litigation strategy.

II. The College's Further Arguments

The College raises what boils down to two further arguments in favor of reversal.

First, the College argues that Doe should not be eligible for attorney fees under section 1021.5 because he brought his writ petition to "advanc[e] his own personal interest" and that any benefit to other students at the College was purely "incidental." To be sure, courts evaluating the propriety of a fee award under section 1021.5 have sometimes considered whether such an award was necessary to incentivize the plaintiff to bring suit or whether the plaintiff already had sufficient economic motive to do so. (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 635 (*Flannery*); *Norberg v. California Coastal Com.* (2013) 221 Cal.App.4th 535, 541-542 (*Norberg*); *Beach Colony II*, *supra*, 166 Cal.App.3d at p. 112; see also *Monterey/Santa Cruz etc. Trades Council v. Cypress Marina Heights LP* (2011) 191 Cal.App.4th 1500, 1523 (*Monterey*) [examining whether "'the burden of the litigation was disproportionate to the plaintiff's individual stake in the matter'"].) This consideration reflects the underlying purpose of section 1021.5 as a "mechanism" of

encouraging "privately initiated lawsuits"; fees should only be awarded where encouragement is needed. (*Woodland Hills*, *supra*, 23 Cal.3d at p. 933.) The courts are currently split over whether a plaintiff is disqualified from receiving attorney fees under section 1021.5 if "the primary effect of [his] lawsuit was to advance or vindicate [his] personal economic interest[]": Some say "yes" (*Flannery*, *supra*, 61 Cal.App.4th at p. 635; *Apple, Inc. v. Franchise Tax Bd.* (2011) 199 Cal.App.4th 1, 29 (*Apple*); *Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1170; *Bell*, *supra*, 82 Cal.App.4th at pp. 690-691 [looking to "primary focus"]); others say such "primary effect" does "'not necessarily'" disqualify the plaintiff (*Robinson v. City of Chowchilla* (2011) 202 Cal.App.4th 382, 399-400; *Indio Police*, *supra*, 230 Cal.App.4th at p. 543; see also, *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 578, fn. 9).

We need not weigh in on this split because even if we adopt the less plaintiff-friendly standard, the trial court had a reasonable basis for concluding that "the primary effect" of Doe's writ petition was not to "advance or vindicate [his] personal economic interest." To be sure, and as the trial court noted, "a primary effect of [Doe's] lawsuit was personal" to Doe because it was aimed at removing a blemish from his academic record and thus at increasing his prospects for professional success down the road. But Doe's lawsuit did not have "the primary effect" of advancing his "economic interests" because he did not seek any monetary recovery in this action and because the future economic benefits that might flow from this action were "'indirect and uncertain'" rather than immediate. (*Monterey*, *supra*, 191 Cal.App.4th at p. 1523; *Sweetwater*, *supra*, 36 Cal.App.5th at p. 992; cf. *Flannery*, *supra*, 61 Cal.App.4th at p. 635; cf. *Beach*

Colony II, *supra*, 166 Cal.App.3d at p. 113 [primary effect "is to advance economic interests" where "the benefits [the plaintiff] obtained are immediate[] and directly translated into monetary terms"]; see cf. *Ibid.* [ruling advancing commercial interests tied to single parcel of property]; *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 167 [same]; *Norberg*, *supra*, 221 Cal.App.4th at p. 542 [same]; *Apple, supra*, 199 Cal.App.4th at p. 29 [ruling granting tax refund to single plaintiff]; *Bell*, *supra*, 82 Cal.App.4th at p. 691 [ruling granting back wages, where separate claim for violation of open meeting law was "simply incidental"].) Because the """expected value""" of Doe's indirect and uncertain """monetary award""" did not """exceed[] by a substantial margin the actual litigation costs""" in this action, the trial court had a reasonable basis to conclude that a fee award under section 1021.5 was consistent with the statute's underlying purpose. (*Collins v. City of Los Angeles* (2012) 205 Cal.App.4th 140, 154-155.) The College's further argument that Doe's post-judgment efforts to preclude the College from re-trying him on the sexual misconduct charges rendered the primary effect of the lawsuit "personal" ignores that the trial court declined to award any fees related to those efforts and that those efforts do not retroactively convert the indirect and uncertain monetary benefit Doe received from his initial suit into an immediate and direct one.

Second, the College seeks to compare and contrast the facts underlying fee awards in other section 1021.5 cases and, in its reply brief, goes so far as to try to enumerate the factors presented in each of the cases where fees were upheld and to urge that the absence of any of those factors—plaintiffs who are multiple individuals, a class, a labor association or a non-profit

organization; a prayer for broad-based declaratory or injunctive relief; or a prayer to enforce a well-defined existing obligation—precludes any fee award under section 1021.5. We reject the College's attempt to turn considerations *relevant* to a fee award into factors *dispositive* of it; doing so is inimical to the discretion conferred to the courts under section 1021.5 by our Legislature. And the cases the College cites as dictating a different ruling in this case are all distinguishable: Those cases hold that a ruling that primarily confers monetary benefits upon the plaintiff does not substantially benefit a large group merely because the ruling sends a "cautionary message" to the losing party (*Flannery*, *supra*, 61 Cal.App.4th at pp. 635-636; *LaGrone v. City of Oakland* (2011) 202 Cal.App.4th 932, 946; *Norberg*, *supra*, 221 Cal.App.4th at p. 543); that a court cannot reasonably conclude that a "large [group]" will benefit from a ruling when the evidence affirmatively shows that only two or three similarly situated individuals will benefit (*Angelheart v. City of Burbank* (1991) 232 Cal.App.3d 460, 469); or that attorney fees are not warranted when the sole ruling affecting others is distinct from, and tangential to, the primary claims yielding a financial award to the plaintiff (*Bell*, *supra*, 82 Cal.App.4th at p. 691).

DISPOSITION

The judgment is affirmed. Doe is entitled to his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
CHAVEZ